IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2189 OF 2005
A/w Cri. Appln Nos.2191/05, 2192/05, 2193/05,
2194/05, 2195/05, 2196/05, 2197/05

Mr. Ravindra V. Shah ...Applicant.

V/s

State of Maharashtra
and Ors. ...Respondents.

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Mr. Subhash Jha with Mr. Shailesh Kumar for the applicant.
Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 15th April, 2005

P.C.:

1. Heard the learned Counsel for the applicants.

2. Applicant is challenging the issuance of process by the Metropolitan Magistrate, 4th Court at Girgaum, Mumbai on a complaint filed by respondent No.2 under section 138 and 141 of the Negotiable Instruments Act.

3. It is submitted by the learned Counsel appearing on behalf of the applicant that the applicant is not responsible in any manner whatsoever with regard to the day-to-day affairs and/or functioning and/or conduct of the business of the accused No.1 - firm which is a proprietary concern and the applicant is not the proprietor of the firm and, therefore he is

not responsible for dishonour of the cheque. It is further submitted that there was nothing in the entire complaint so as to justify invocation of section 141 of the Negotiable Instruments Act and there was no averment in the complaint that the applicant was responsible for day-to-day affairs and or conduct of the business of the accused company. In support of the said submission, the learned counsel appearing for the applicant has relied upon the judgment in the case of S.K. Real Estates Vs. S. Ahmed Meeran, reported in 2002 Cri.L.J. 1689 in which it was held that the complaint which is filed against the proprietary concern was liable to be quashed since it is not a legal entity. It is submitted that the prosecution against the proprietorship was not maintainable as it was not a legal entity or a juridic person.

4. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the applicant. From the perusal of the complaint, it can be seen that it is alleged in the complaint that accused Nos. 2 and 3 are responsible persons for conducting day-to-day business of accused No.1. It is further stated that accused Nos 2 and 3 are operating Bank Account of accused No.1. It is stated that accused No.1 is a firm and/or association of persons

as per the provisions of section 141 of the Negotiable Instruments Act. It is thus nowhere mentioned in the complaint that the accused No.1 is a proprietary concern. On the contrary, it is mentioned that it is a firm and/or association of persons as per the provisions of section 141 of the Negotiable Instruments Act. It is the applicant who has alleged that the accused No.1 is a proprietary firm and not the complainant. The ratio of the Judgement in the case of S.K. Real Estates (supra) on which the reliance is placed by the learned counsel for the applicant, therefore, will not be applicable to the facts of the present case. In my view, there are sufficient averments in the complaint which would be sufficient for the purpose of attracting the provisions of section 141 of the Negotiable Instruments Act, since the explanation to section 141 also includes the association of persons. The question, therefore, whether the accused No.1 is a proprietary concern or association of persons as alleged in the complaint can be decided only after the evidence is adduced by both the parties. All questions raised in these applications are, therefore, kept open and the Trial Court shall decide the questions raised in these applications after the evidence is adduced by both the parties on merits and

in accordance with law. Hearing of the trial is expedited.

5. With the above directions all these Criminal Applications are dismissed.

V.M. KANADE, J.